

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Takuya Tamatani et al.	Art Unit :	1644
Patent No. :	7,247,612	Examiner :	Ilia I. Ouspenski
Issue Date :	July 24, 2007	Conf. No. :	3400
Serial No. :	10/723,602		
Filed :	November 25, 2003		
Title :	METHODS OF TREATING AN INFLAMMATORY DISEASE WITH A JTT-1 POLYPEPTIDE		

Mail Stop Petitions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 C.F.R. § 1.183
FOR SUSPENSION OF THE REQUIREMENTS OF 37 C.F.R. § 1.705(d) AND (e)

Patentee hereby petitions the Commissioner under 37 C.F.R. § 1.183 for a suspension of 37 C.F.R. §§ 1.705(d) and (e) and for acceptance of the "Application For Patent Term Adjustment Under 37 C.F.R. § 1.705(d)" filed with this petition, to correct an erroneous patent term adjustment calculation. 37 C.F.R. §§ 1.705(d) and (e) provide that an application for patent term adjustment must be filed within two months after patent issuance and that the period is not extendable.

At the time of issuance of the above patent, the U.S. Patent and Trademark Office's ("the Office's") published interpretation¹ of the statute and regulations governing patent term adjustment unambiguously supported the Office's patent term adjustment calculation for the patent. In reliance on the Office's interpretation, as published in the Federal Register, Patentee did not challenge the Office's final patent term adjustment calculation. However, on September 30, 2008, the U.S. District Court for the District of Columbia issued an opinion in Wyeth et al. v. Jon W. Dudas (U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008) finding that a critical aspect of the Office's published method for calculating the patent term adjustment is in error. The court's holding that the Office's

¹ "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)," published on June 21, 2004 at 69 Fed. Reg. 34283-84.

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: January 22, 2009

interpretation of the statute and regulations governing patent term adjustment is in error occurred more than two months after the present patent issued. As a result, petitioner could not have reasonably presented a request for reconsideration of the patent term adjustment within the time period specified under 37 C.F.R. § 1.705(d).

37 C.F.R. §1.183 provides that “[i]n an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived ...” The present case presents a rare instance where the Office’s published interpretation of a statute and corresponding regulations has been overturned by the courts. In such an exceptional case, it would be manifestly unjust to punish those who made an earnest attempt to comply with the laws and regulations as interpreted by the Office. Furthermore, the time period specified under 37 C.F.R. § 1.705(d) is not a requirement of the statutes and is therefore eligible for suspension under 37 C.F.R. §1.183.

As detailed in the enclosed application for patent term adjustment, if this petition is not granted then the patent will have a term that is shorter than that to which it is legally entitled, seriously prejudicing Patentee in fully enforcing its statutory patent rights. In view of Patentee’s reliance on the Office’s published interpretation of the patent term adjustment statute and regulations, and in the interests of fundamental fairness, Patentee respectfully requests that the time limit for consideration of an application for patent term adjustment be suspended so as to permit reconsideration according to the rule established by the court in Wyeth v. Dudas.

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Attorney's Docket No.: 14539-0004011 / JF-0052US-D5-C1

The petition fee required by 37 C.F.R. § 1.17(f) in the amount of \$400 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 14539-0004011.

Respectfully submitted,

Date: January 22, 2009

/Jack Brennan/
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